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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 77-1434

MOBIL OIL CORPORATION, *Petitioner,*

v.

FEDERAL TRADE COMMISSION, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONER MOBIL OIL CORPORATION

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Mobil is constrained to reply to the FTC's Brief in Opposition to its Petition for *Certiorari* only to advise this Court of a serious misstatement in the second question presented by the FTC. The second question is

> "whether the relevance of documents sought by agency subpoenas *may* be determined by

> considering whether the documents are reasonably relevant to the formally stated purpose of the agency's investigation." (Br. Opp. 2) (emphasis supplied).

The nature of that misstatement goes to the heart of this controversy.

The majority of the Court of Appeals did *not* hold that relevancy *may* be determined by reference to the agency resolution; it held that

> "the relevance of the material sought by the FTC *must* be measured against the scope and purpose of the FTC's investigation, as set forth in the Commission's resolution." (A-22) (emphasis supplied).[1]

The distinction is crucial for, had the Court of Appeals not postulated a legal requirement that relevancy be determined by reference to the resolution, it would have been required to affirm the District Court's factual determination that Mobil's bid files and other non-proved reserve data are irrelevant under the abuse of discretion and clearly erroneous standards. (A-76). In other words, the majority circumvented the usual

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[1] Elsewhere the majority observed:

> "The relevance of the agency's subpoena requests may be measured *only* against the general purposes of its investigation." (A-21–22) (emphasis supplied).

review standard by asserting that the District Court's factual findings on relevancy were "dependent on, and integrally related to" a faulty legal premise. (A-26, n. 29).

It is precisely this holding–that relevancy can *only* be measured against the resolution–that reads the relevancy requirement out of the law and renders the Constitutional limitations of the Fourth Amendment meaningless. It is the trial court's ability to look behind expansive, meaningless language in boilerplate resolutions and measure relevancy against the real purpose of the agency's investigation,[2] that gives any meaning to the Fourth Amendment protections. It is this function which the majority of the Court of Appeals held, as a matter of law, is impermissible.

Thus, the question here is not–as the FTC asserts–whether relevancy *may* be determined by considering the agency resolution. The question is whether relevancy *must* be so determined, even where the agency has stated its

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[2]Here, it must be remembered, that purpose was not a result of petitioner's "characterization", as the FTC asserts (Br. Opp. at 11), but rather was openly and officially stated by the agency. (A 96-97).

specific purpose much more narrowly, and where the agency's resolution is so vague as to provide no standard for that determination. That question has Constitutional dimensions which merit review by this Court.

Respectfully submitted,

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